

MEMORANDUM

September 27, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: LAURA INLOW
Lewis, Brisbois, Bisgaard, and Smith

ROGER H. GRANBO
Principal Deputy County Counsel
General Litigation Division

RE: Allen Rose v. County of Los Angeles
Long Beach Superior Court Case No. NC 034363

DATE OF
INCIDENT: August 7, 2002

AUTHORITY
REQUESTED: \$300,000

COUNTY
DEPARTMENT: Public Defender

CLAIMS BOARD ACTION:

☐

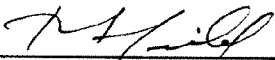
Approve

☐

Disapprove

☒

Recommend to Board of
Supervisors for Approval



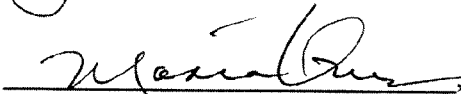
ROCKY A. ARMFIELD

, Chief Administrative Office



JOHN F. KRATTLI

County Counsel



MARIA M. OMS

Auditor-Controller

on October 4, 2004

SUMMARY

This is a recommendation to settle for \$300,000, a professional malpractice lawsuit filed by Allen Rose, who claims that because of the negligence of his Deputy Public Defender, he was improperly sentenced pursuant to the Three Strikes law, and served more prison time than he should have.

LEGAL PRINCIPLES

A Deputy Public Defender may be found liable for professional malpractice if the legal work he or she provides falls below the professional standard of care for attorneys practicing in the same field, and causes damage to the person he or she is representing.

The County is liable for the negligent and intentional acts of its employees when the acts are done in the course and scope of employment.

SUMMARY OF FACTS

In 1994, Allen Rose was criminally charged with assault with great bodily injury, and making terrorist threats. He plead guilty to the assault, and was sentenced to twelve years in state prison pursuant to the Three Strikes law, which enhanced criminal sentences for certain repeat offenders.

After serving approximately eight years of the sentence, Mr. Rose discovered that he was improperly sentenced under the Three Strikes law because the crime for which he was convicted was committed prior to the enactment of the Three Strikes law. He filed with the Court a Petition for Writ of Habeas Corpus which was granted, and he was released after serving eight years and three months in prison.

According to Mr. Rose's calculation, he was over-detained for a minimum of five years and three months. According to our calculation, he was over-detained for not longer than one year and four months.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Emotional Distress	\$1,000,000
--------------------	-------------

The proposed settlement calls for the County to pay Mr. Rose \$300,000 for all of his damages, costs, and attorney fees.

STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the proposed settlement.

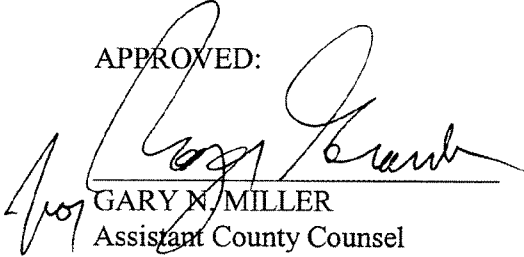
Expenses incurred by the County in defense of this action are attorney fees of \$3,660 and \$2,680 in costs.

EVALUATION

This is a case of probable liability. The Public Defender's Office acknowledges that the Deputy Public Defenders who handled Mr. Rose's case failed to recognize that the Three Strikes law did not apply. A reasonable settlement at this time will avoid further litigation costs, and a jury verdict that could exceed the proposed settlement.

We join with our private counsel, Lewis, Brisbois, Bisgaard, and Smith, and our third party administrator, Carl Warren and Company, in recommending a settlement of this matter in the amount of \$300,000. The Public Defender's Office concurs in the recommendation.

APPROVED:


GARY N. MILLER
Assistant County Counsel
General Litigation Division

RHG:scr

Los Angeles County Public Defender's Office

Corrective Action Plan

September 13, 2004

LAWSUIT: Allen Rose v. County of Los Angeles, et. al.
Case #NC034363

INCIDENT DATE: July 12, 1994

INCIDENT LOCATION: Los Angeles County Superior Court, Long Beach Branch

ISSUES

Plaintiff, a Los Angeles County Public Defender client, alleges professional malpractice, violation of Civil Code Section 52.1, false imprisonment and negligence during the handling of his 1994 criminal case by the Los Angeles County Public Defender's Office. Specifically, plaintiff contends that he was persuaded to plead guilty and was over-incarcerated because the Deputy Public Defenders who handled his case failed to recognize that he was being wrongly prosecuted under the "Three Strikes" law.

INVESTIGATIVE REVIEW

Plaintiff was charged in a 1994 criminal complaint with assault with great bodily injury and terrorists threats under the "Three Strikes" law. Court records indicate that plaintiff plead guilty to assault with great bodily injury, admitted a five year prior and was sentenced under the "Three Strikes" law to a term of 12 years in state prison. The investigative review revealed that although plaintiff came through the criminal justice system shortly after the "Three Strikes" law was enacted, the offense in plaintiff's criminal case actually preceded the enactment date of the new law and therefore should not have been subject to the sentencing enhancements of the "Three Strikes" law.

Complicating a review of the matter was the fact that the public defender case file could not be located in archives despite a thorough and diligent search.

CORRECTIVE ACTIONS

The investigative review revealed that despite having been trained, the Deputy Public Defenders who handled plaintiff's criminal case failed to recognize that the "Three Strikes" law did not apply in the case because the alleged crime was committed before the law was enacted.

Allen Rose v. County of Los Angeles, et.al.
Case #NC034363
September 13, 2004

Although it is unlikely that new cases, with offense dates before the enactment of "Three Strikes" (March 7, 1994), would now make their way through the criminal justice system, the Public Defender's Office continues to publish and distribute to all Deputy Public Defenders frequently updated summaries of the "Three Strikes" law (Attachment A). Additionally, the Department posts these summaries electronically on the Public Defender Web Site (PDWeb) for review by all Deputy Public Defenders.

Future changes in the law which contain similar retroactivity issues will be evaluated, summarized and distributed to all Deputy Public Defenders both in hard copy form and electronically on the PDWeb. One such summary relates to Proposition 66, which if passed in the November 2, 2004 election, will become law and will not be retroactive in certain regards. The attached summary of Proposition 66 (Attachment B) is now posted electronically on the PDWeb and a version of the summary will be distributed in hard copy form to all Deputy Public Defenders on September 15, 2004.

Lastly, the Public Defender's Office represents clients in over 500,000 cases each year and is mandated by law to retain these case files indefinitely. As the investigation revealed, retention, maintenance and efficient retrieval of case files is in need of a vast overhaul. As such, the Department will seek additional funding to address the storage, maintenance and retrieval of this ever growing volume of cases. Traditional storage options as well as alternatives such as electronic storage via large scale scanning devices will be evaluated.